United Nations A/HRC/26/NGO/73

General Assembly

Distr.: General
5 June 2014

English only

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Social Service Agency of the Protestant Church in Germany, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-04296 (E)
1404296

Please recycle

Call on the Human Rights Council to establish an open ended working group for the development of a binding treaty in the area of business and human rights

As protestant development Agency cooperating with numerous partner organizations in the global south we see the urgent need for binding regulation in the area of business and human rights. We therefore welcome the initiative of a number of states presently urging for the development of binding standards on Business and Human Rights and call on the United Nations Human Rights Council to establish an open ended inter-governmental working group tasked with a drafting mandate.

Many of our partner organizations facing deregulated labour markets and disrespect of core labour standards by subsidiaries of transnational companies. Investments in extractive industries and large scale agriculture are driving small farming families off their land and polluting the environment. Loss of land, access to water and loss of biodiversity are in turn leading to increasing poverty and food insecurity. Partner organisations are also trying to address the negative impacts of privatisation of public goods and services. Communities standing up for their rights against national and transnational companies are facing severe criminalization. In many cases corporations are cooperating with state and private security forces to suppress community protests.

National governments and courts that hold primary responsibility for protecting human rights in their own countries often remain inactive. Inadequate legislation and poor governance are part of the problem, however many countries are dependent on deregulated markets attracting foreign investment. This structural unbalance is being consolidated by corporate lobby activities, bilateral investment treaties and investor- to -state dispute settlements. Based on these treaties companies are succeeding in preventing regulatory, social and rights based policies that could reduce the negative impacts of foreign investment.

This highlights a fundamental contradiction of economic globalization. On the one hand structural adjustment measures and trade and investment protection agreements have made it considerably easier for enterprises operating internationally to access markets and raw materials worldwide, and have granted them very extensive investor rights. On the other hand, internationally and in the home countries of transnational enterprises, no effective mechanisms have been created to prevent human rights abuses associated with the activities of those enterprises, and to hold guilty parties to account. These regulatory gaps are making an effective realisation of human rights very difficult.

The UN Guiding Principles on Business and Human Rights are a first step towards closing some of these gaps and clarifying state duties and corporate responsibilities. They have succeeded in helping corporations understand that they have a duty to respect human rights and what this entails. They have affirmed the state duty to protect people from human rights abuses through companies and have highlighted the importance of remedies.

However, when corporations violate human rights the Guiding Principles do not provide any means of holding these corporations accountable for their behaviour. The UN-Working Group on Business and Human rights has no means or mandate to address human rights violations. The few states that have developed national actions plans for implementation, have focused on weak self regulatory approaches, steps towards implementing the third pillar on access to justice for victims of corporate abuses are largely missing. As emphasized by the human rights council in resolution 17/4, the UN guiding principles must therefore be seen as the end of the beginning and as a common platform from which the UN can develop further long term measures. We believe that while continuing to implement the UN Guiding principles at national level, States should also cooperate in developing a binding international instrument to hold corporations accountable for Human Rights abuses.

A binding international instrument should

- build on standards developed by the Guiding principles
- require State Parties to monitor and regulate the operations of business enterprises under their jurisdiction, including when acting outside their national territory.
- require State Parties to establish legal liability for human rights abuses and access to an effective remedy for victims.
- include an international monitoring and accountability mechanism.

A parallel approach of implementing the UN Guiding Principles at the national level and developing binding international standards will increase the impact on the ground and contribute to a level playing field for business investments.